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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 13 2010

SRC 09 154 50050

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in sciences. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the beneficiary demonstrate "sustained national or international acclaim" and present "extensive documentation" of his or her achievements. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten criteria that call for the submission of specific objective evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). Through the submission of required initial evidence, at least three of the ten regulatory criteria must be satisfied for an alien to establish the basic eligibility requirements.

On appeal, the petitioner argues that he meets four of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. Law

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines the following ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
>
> (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
>
> (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
>
> (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
>
> (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
>
> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
>
> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's approach rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at *6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian.* As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

This petition, filed on April 23, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[2]

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The petitioner initially did not claim this criterion. However, on appeal, counsel claims the petitioner was accepted for membership in The Association for Research in Vision and Ophthalmology (ARVO) based on his review and acceptance of his abstract entitled "Condon Optimization Increases Bacterial Expression of Functionally Active Pigment Epithelium Derived Factor." In order to support his contention that he is a member of ARVO, the petitioner provided an acknowledgement from ARVO of his application and submission of his abstract for review, and an acceptance letter for the abstract from ARVO dated February 21, 2008.

Counsel also claimed on appeal that the petitioner was a member of the Georgian Biophysical Society. No evidence was provided to establish his involvement in this organization. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In order to demonstrate that membership in an association meets this criteria, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner failed to provide evidence (such as membership bylaws or official admission requirements) showing that ARVO or the Georgian Biophysical Society requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one. While publication may be a requirement for admission into ARVO, this was not documented through the evidence. Further, even if the petitioner demonstrated that publication is required for membership in ARVO, publication of an abstract is not indicative of an outstanding achievement.

Moreover, the petitioner failed to show that his membership in ARVO or the Georgian Biophysical Society was judged by recognized national or international experts in the field.

Accordingly, the petitioner has not established that he meets this criterion.

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[2] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner did not initially specifically claim this criterion. However, on appeal, counsel claims that the petitioner has satisfied this criterion. The petitioner alleges that "a Google search reveals 154 references" and that "a computer search in GINFO.PL, a reliable source of international data and government information" identifies the petitioner in "the person category of 'world scientists.'" However, as aforementioned, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165.

In addition, the petitioner references publications which have cited to his findings. The petitioner submitted five articles, citing to his articles, from *Advances in Protein Chemistry, Proteins: Structure, Function and Bioinformatics* and *FEBS Journal.* The petitioner also provided abstracts from Medline Abstract, the *Bulletin of Georgian Academy of Sciences, Byophysics*, HighBeam Research, and the National Science Foundation, some of which were previously submitted. These abstracts include brief discussions regarding his articles.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to his work. *Compare* 8 C.F.R. § 204.5(i)(3)(i)(C) which only requires published material about the alien's work. Articles authored by the petitioner, or articles which cite the petitioner's work, are not articles about the petitioner relating to his work. However, while these citations are not relevant to this criterion, they will be considered below as they relate to the significance of the petitioner's contributions and scholarly articles, as well as whether he has the requisite sustained acclaim and has established that he has reached the very top of his field.

Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation." However, the abstracts provided do not include authors or titles, aside from the titles of the articles they are summarizing. As such, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[3]

[3] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

A review of the citations and abstracts reflect that they are not primarily or principally "about" the petitioner. Instead, they revolve around the petitioner's research and published materials.

In light of the above, the evidence does not meet the plain language requirements for this criterion, set forth at 8 C.F.R. § 204.5(h)(3)(iii).

Accordingly, the petitioner has not established that he meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

Counsel argued in his appeal brief that the petitioner is recognized for his "seminal research on cooperativity of salt bridges and proteins to recognize rules for more effective biocatalytic molecules with improved biological function." In order to satisfy this criterion, the petitioner provided the following evidence:

1. A reference letter from [redacted], Chemistry and Chemical Biology, Rensselaer Center for Biotechnology and Interdisciplinary Studies, Rensselaer Polytechnic Institute, dated March 26, 2009;
2. A reference letter from [redacted], Neural Behavioral Sciences, Penn State Hershey College of Medicine, dated April 1, 2009;
3. A reference letter from [redacted], Neural and Behavioral Sciences and Ophthalmology, Penn State Hershey College of Medicine, dated March 23, 2009;
4. A reference letter from [redacted], Center for Biotechnology and Interdisciplinary Studies, Rensselaer Polytechnic Institute, dated July 15, 2009;
5. A reference letter from [redacted] of Neural & Behavioral Sciences, Penn State Hershey College of Medicine, dated June 26, 2009;
6. A reference letter from [redacted], Department of Biochemistry and Molecular Biology, Penn State Hershey College of Medicine, dated May 14, 2009;
7. A reference letter from [redacted] Department of Biochemistry and Molecular Biology, University of Texas Medical Branch, dated June 8, 2009;
8. A reference letter from [redacted], Talecris Biotherapeutics, dated July 14, 2009;
9. A reference letter from [redacted] Division of Gastroenterology/Hepatology, Department of Medicine, University of Louisville, dated July 12, 2009; and
10. A list of laboratories located internationally with whom the petitioner has a relationship.

In addition to the above evidence referenced with regard to this criterion, we have also considered the petitioner's articles, citations to his publications, and his involvement in conferences. To support his claim of impact on his field, the petitioner refers to 154 "references" from a Google search. The record, however, contains no documentary evidence to substantiate this claim. In fact, a current

search on Google Scholar[4] finds that the petitioner's two articles were cited only 8 times in total while the record contains evidence of five articles that cited to his work. This citation amount is minimal. While these citations demonstrate brief interest in his published and presented work, they are not sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with a claim that his work may be considered to have been a contribution of major significance in his field. To satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that his work is novel and useful, but also that it has had a demonstrable impact on his field. The petitioner has not shown, for instance, how the field has changed as a result of his work, beyond the incremental improvements in knowledge and understanding that are expected from valid original research.

Aside from the petitioner's publications, citations thereto, and involvement in presentations, the petitioner relies solely on reference letters for this criterion. [redacted] indicated in his letter (item 1) that he:

> [C]an attest that he [the petitioner] is an extraordinary scientist in the field of protein stability and folding. He [the petitioner] is extremely knowledgeable and has the sophistication in both biochemistry and biophysics. [redacted] track record of past achievements shows that he is a valuable asset to the scientific potential of the United States.

However, although [redacted] describes the petitioner's research, he fails to provide a specific description of what type of impact the petitioner has made in his field. Likewise, [redacted] letter (item 2) echoes [redacted] claims but again fails to specifically explain how the petitioner's findings have impacted the field. [redacted] states that the petitioner's:

> [W]ork has truly helped him establish as an outstanding researcher with growing national and international recognition. [redacted] is one of a very small group of outstanding scientists, whose findings are being translated into new treatments for a human disease. As his record indicates, he is becoming a leading researcher in the field and has developed a unique set of broad skills that are rarely matched.

The general claim that the petitioner's work is "important to the scientific community," as well as Penn State University and that his ongoing work "will be critical" is not sufficient to establish that the petitioner's work has already significantly impacted his field. [redacted] concludes her letter (item 3) by stating that the petitioner "has unique skills and potential for more important discoveries in the medical field and in the development of novel technological strategies." Merely having a diverse or "unique" skill-set and "potential" does not establish the petitioner's original or significant contribution to the field. [redacted] reference letter (item 4) similarly indicated that the petitioner is a "very enthusiastic investigator who will continue his well respected research and making pivotal contributions to the American Science in these very difficult and competitive

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[4] http://scholar.google.com/scholar?q=author%[redacted] accessed on April 13, 2010 and incorporated into the record of proceeding.

moments for the American scientific community." [redacted] letter (item 5) also references the potential that the petitioner has in his research. [redacted] stated that the petitioner's "track record of past achievements shows that he is a valuable asset to the scientific potential of the United States." [redacted] also feels that the petitioner has "unlimited potential" to "make important medical discoveries that may aid in development of novel protein therapeutics that can improve the lives of patients suffering from neurodegenerative conditions."

In this case, the petitioner failed to submit preexisting, independent evidence of original contributions of major significance. While the letters highly praise the petitioner and provide examples of his research and work, they fail to establish that he has made contributions of major significance in his field. In evaluating the reference letters, they do not specifically identify how his contributions have influenced the field; rather, the letters discuss the possible implications that his work may lead to in the future. We will not consider evidence reflecting claims of future speculation. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

In this case, the recommendation letters are not sufficient to meet this regulatory criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of any immigration petition are of less weight than preexisting, independent evidence or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

Lastly, the petitioner provided a list of laboratories and scientists with whom he has had a relationship (item 10). As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165.

As discussed above, the petitioner has failed to establish how his work has influenced his field to the extent that it is considered to have been a contribution of major significance in his field. Accordingly, the petitioner has not established that he meets this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submitted the following articles that he authored and co-authored that had been published at the time of filing, including; "Cooperativity of complex salt bridges" published in *Protein Science*, "Elimination of the C-cap in ubiquitin – structure, dynamics and thermodynamic consequences" published in *Biophysical Chemistry*, "Microcalorimetric Study of Troponin T" published in the *Bulletin of the Georgian Academy of Sciences*, "The Effect of the Ionic Force and Temperature on Troponin I Molecule" published in the *Bulletin of the Georgian Academy of Sciences*, and "Study of Temperature Action on Structural Properties of Titin Molecule Using Intrinsic Fluorescence and Calorimetry Methods" published in the *Bulletin of the Georgian Academy of Sciences*. The petitioner also provided abstracts, not full articles, from Medline Abstract, the *Bulletin of Georgian Academy of Sciences, Byophysics*, HighBeam Research, and the National Science Foundation. In addition, the petitioner provided evidence relating to his involvement in conferences. On appeal, the petitioner also provided several articles that cited to his work, as well as abstracts that he wrote.

As such, the petitioner has provided sufficient evidence to establish that he meets the plain language of this criterion.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). *See Kazarian,* 2010 WL 725317 at *3.

In this case, the specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The petitioner submitted documentation relating to his achievements. Although the petitioner has meet one of the criterion, he falls far short of meeting any others. Further, the submitted evidence is not indicative of the petitioner's national or international acclaim and there is no indication that his individual achievements have been recognized in the field.

With regard to the evidence submitted for 8 C.F.R. § 204.5(h)(vi), although the petitioner has met the plain language of the regulation through his authorship of scholarly articles, he has not established that the publication of such articles in publications such as *Protein Science*, *Biophysical Chemistry*, and the *Bulletin of the Georgian Academy of Sciences* demonstrates a level of expertise and

recognition indicating that he is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). As authoring scholarly articles is inherent to a research scientist, we will evaluate a citation history or other evidence of the impact of the petitioner's articles to determine the impact and recognition the petitioner's work has had on the field and whether such influence has been sustained. Mere publication with no impact or no import to his field is not indicative of sustained acclaim. For example, numerous independent citations for an article authored by the petitioner would provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. On the other hand, few or no citations to articles authored by the petitioner may indicate that his work has gone largely unnoticed by his field. As previously indicated, the petitioner's work has only been minimally cited. Such a minimal citation rate is not sufficient to demonstrate that his articles have attracted a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field.

While the petitioner's accomplishments may distinguish him from other researchers, we will not narrow his field to others with a similar level of training and experience. When compared to the accomplishments of these individuals, it appears that the highest level of the petitioner's field is far above the level he has attained. For example, one of his references, [redacted] from Rensselaer Polytechnic Institute claimed to have over 90 peer-reviewed publications in scientific journals. Additionally, [redacted] serves as an Editorial Board Member of *Protein Engineering, Design, Selection, Proteins: Structure Function and Bioinformatics,* and on the *Journal of Biomedicine and Biotechnology*, as well as having served on two additional journals in the past. [redacted] likewise, has extremely impressive credentials, having authored over one hundred and seventy articles and chapters in peer-reviewed journals and books. In addition to currently being a faculty member at Penn State College of Medicine, [redacted] has also served as a faculty member at other distinguished universities including Harvard Medical School, Rockefeller University and Yale University. Additionally, [redacted] has served on several editorial boards, and on the scientific advisory board of the Macula Vision Research Foundation. [redacted] from Penn State College of Medicine similarly attests to her ability to evaluate the petitioner. [redacted] claims to have published over two hundred peer-reviewed articles and abstracts, and has served as an Editor-in-Chief for the *Journal of Ocular Biology, Disease, and Mechanisms*, as well as being a member of several Editorial Review Boards.

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established his eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v.*

U.S. Dept. of Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.